

**DIVISION OF ADMINISTRATION**

**PERSONNEL POLICY No. 11**

**EFFECTIVE DATE:**       October 1, 1988; Revised February 7, 1994;  
Revised July 27, 1994; Revised February 1,  
1999

**SUBJECT:**               Sexual Harassment in the Workplace

**AUTHORIZATION:**

Whitman J. Kling, Jr.  
Deputy Undersecretary

**I.    AUTHORITY:**

Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Act of 1972, as amended by the Pregnancy Disability Act of 1978.

**II.   PURPOSE:**

To establish the Division of Administration's (hereinafter referred to as the Division) position on the subject of sexual harassment, to educate and inform employees regarding this important issue, to provide the options for making a complaint and to set forth guidelines for handling violations of the policy.

**III.  APPLICABILITY:**

This policy applies to all employees of the Division and to all sections within the Division, both general appropriation and ancillary appropriation. The intent of this policy extends to anyone with whom our employees do business to include vendors, contractors, visitors, etc.

#### IV. POLICY:

Sexual harassment is a form of discrimination, is detrimental to a productive work environment and is against federal and state law.

The Division is committed to maintaining a work environment that is free of discrimination including sexual harassment.

In keeping with this commitment, the Division will have a **zero tolerance policy** for sexually harassing behavior either directed toward Division employees or directed by Division employees to those with whom we conduct business.

All Division employees are responsible for helping to assure the absence of sexual harassment in any location where our employees are conducting business. Any employee who feels that he/she has experienced or witnessed sexual harassment should immediately report this as directed below.

The Division will investigate all such complaints thoroughly and promptly. To the fullest extent possible under the law, but in keeping with sound management practices, the Division will keep complaints and the terms of their resolution confidential.

If an investigation confirms that harassment has occurred, the Division shall take appropriate corrective action and/or discipline, which could include termination of employment.

The Division forbids retaliation against, reprisal against, or coercion of anyone who has reported sexual harassment or participated in an investigation. Allegations of this behavior will be investigated. If an investigation confirms that this has occurred, the Division shall take appropriate disciplinary action,

which could include termination of employment.

**V. DEFINITIONS:**

- A. **Sexual Harassment** is a form of illegal sex discrimination where an employee is the subject of unwelcome sexual advances, requests for sexual favors and/or other verbal/physical conduct of a sexual nature. The two types of sexual harassment actionable under Title VII are:

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1. **Quid Pro Quo** (Latin for "This for That") - occurs when the employee suffers a tangible job detriment in retaliation for refusing to submit to sexual demands. Quid Pro Quo harassment can be committed only by a supervisor or some other member in the department hierarchy who has the power to confer or withhold a tangible employment benefit.
2. **Hostile Environment** - occurs when the employee suffers no tangible job benefit or detriment but where the unwelcome conduct is sufficiently pervasive or severe to unreasonably interfere with the employee's work performance or creates a work environment that is intimidating, hostile, or offensive. A supervisor, co-worker, or a non-employee, such as a vendor or customer, can create a hostile work environment.

The two types of harassment can overlap and occur together.

- B. Sexual harassment includes conduct of a sexual nature which may be overt or subtle. Sexual harassment can be verbal, non-verbal, physical, or visual and may include but is not limited to:
1. **VERBAL:** unwelcome sexual flirtations and/or advances, sexual innuendo or sexual comments, insults which are sexual in nature, humor and jokes about sex or gender-specific traits or of a sexual nature, sexual propositions, threats, suggestive comments, sexually oriented "kidding"

or "teasing", foul or obscene language or gestures, slurs or inappropriate language, improper questions about a worker's private life, etc.

2. **NON-VERBAL:** display of foul or obscene printed or visual material, foul or obscene gestures including those which suggest sexual acts, sexually-oriented gestures or noises, leering, sexually-oriented whistling, reading, displaying or publicizing in the work environment pictures, posters, calendars, graffiti, objects, promotional

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materials, reading materials, or other materials that are in any way sexually revealing, sexually suggestive, sexually demeaning or pornographic, etc.

A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is not fully and appropriately clothed and/or who is posed for the obvious purpose of displaying or drawing attention to the private portions of his or her body.

3. **PHYSICAL:** physical contact such as patting, pinching, embracing, or brushing against another's body, coerced sexual intercourse, assault, etc.
4. **OTHER:** Offering employment, promotions, or other benefits in exchange for sexual favors, taking reprisals or threatening reprisals for refusing sexual advances, etc.

- C. **Same-Sex Harassment** - Sexual harassment conducted by someone of one sex against someone of the same sex.
- D. **Unwelcomeness** - Only unsolicited sexual conduct that the employee regards as undesirable or offensive is unlawful.
- E. **Tangible Job Detriment:** A Tangible Job Detriment is

defined as discharge, demotion, reduction in pay, denial of promotion or raise, reassignment or transfer to a less desirable position and constructive discharge.

## **VI. COMPLAINT PROCEDURE:**

Every employee is responsible for reporting unacceptable behavior or environmental issues which may violate this policy. This includes any individual who (or group which) believes that he has been the target of sexual harassment or retaliation or who has observed incidents believed to be sexual harassment.

- A. **TO WHOM:** The report may be made to the immediate supervisor, any supervisor or manager within the section, the section head, the appointing authority, any assistant commissioner or deputy commissioner, the Human Resources Director, the Assistant Human Resources Director, the Employee Relations Manager in the Human Resources Office (225/342-6060).

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- B. **WHAT FORMAT AND CONTENT:** The report may be made verbally or in writing and should include the name(s) of the offender(s), when and where the offense occurred, what behavior or situation was offensive, what the complainant did or said in reaction, the names of any witnesses, and any other information which may be related to the offense. If possible, documentation which is available should be included in the report or provided at the time of the report.

It is a violation of this Policy for an individual to make an intentionally false and/or malicious accusation of sexual harassment. Any individual who is found to have made an intentionally false and/or malicious accusation of sexual harassment will be subject to disciplinary action. This is not intended to discourage complaints and/or reports when there is sincere belief that sexual harassment or retaliation has occurred.

## **VII. INVESTIGATION PROCESS**

- A. All complaints/reports shall be presented to the appropriate authority promptly.

- B. The appointing authority shall always be notified before an investigation is begun.
- C. All complaints/reports shall be investigated promptly and to the fullest extent practicable.
- D. The investigation shall be conducted by the appointing authority or his/her designee. The designee shall have investigative experience and/or training.
- E. This policy shall be explained to all participants in the investigation to ensure understanding and compliance.
- F. Each individual interviewed shall be informed that any coercion toward or retaliation or reprisal against anyone who has made a complaint or who has provided evidence in connection with a complaint is strictly prohibited, and if found, punished.
- G. The investigation shall include recorded statements if possible.
- H. Upon completion of the investigation, the investigator shall provide the appointing authority with a report

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which normally includes a recommendation of remedial measures including disciplinary action where appropriate.

- I. The appointing authority may chose to ask follow-up questions or conduct additional interviews him or herself.
- J. Confidentiality:
  - 1. Only those who have an immediate need to know may be informed of the nature of the complaint and the identity of the individuals involved. The issues, the findings, and the terms of the resolution shall be kept confidential until such time as it becomes public record.
  - 2. All parties involved in any way in the investigation shall maintain the confidentiality of their participation and any and all

information related to the investigation to which they are privy.

- K. The Resolution: The appointing authority shall determine the ultimate resolution of any report or allegation of sexual harassment. The complainant shall be advised of the results of the investigation upon its conclusion and instructed to report any future incidents of harassment, retaliation or reprisal which might occur immediately.
- L. Documentation: The Human Resources Office shall maintain the investigation report as well as all supporting documents in a confidential manner. Supporting documents include but are not limited to all working papers, notes, correspondence, including messages transmitted via electronic mail.
- M. If the complaint was found to be based in fact, the appointing authority or his/her designee shall follow-up with the complainant in one to two months to assure that the harassing behavior has ceased and the environment is acceptable.

#### **VIII. RESPONSIBILITY:**

- A. Deputy/Assistant Commissioners, Deputy Undersecretary, and Other Executive Level Administrators Are Responsible For:

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- 1. Personally complying with all aspects of this policy.
- 2. Holding the section heads under their supervision accountable for adhering to all aspects of this policy.
- 3. Reporting all allegations or discoveries of sexual harassment and/or retaliation to the Commissioner, the appointing authority, the Human Resources Director, the Assistant Human Resources Director or the Employee Relations Manager in the Human Resources Office.
- 4. Treating sexual harassment matters **with seriousness and confidentiality** and sharing

information regarding allegations, investigations, resolutions, etc., on a "need to know" basis.

5. Participating in and assuring the participation of all employees under their supervision (directly and indirectly) in all programs provided to educate employees relative to the prevention of sexual harassment.
6. Evaluating the work environment on a continuous basis through:
  - Tours of the workplace with a view toward inspection for inappropriate calendars, graffiti, desk toys, etc, and
  - Listening for inappropriate language, jokes, remarks, etc., in the everyday conversation of employees, and
  - Discussing sexual harassment in regular management meetings, and immediately dealing with any problems encountered in the appropriate manner.

B. Section Heads and Executive Level Administrators Who Directly Supervise Employees Are Responsible For:

1. Personally complying with all aspects of this policy.
2. Holding employees under their supervision accountable for adhering to all aspects of this policy.

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3. Immediately reporting all allegations or discoveries of sexual harassment and/or retaliation to their supervisor, the appointing authority, the Human Resources Director, the Human Resources Assistant Director, or the Employee Relations Manager in the Human Resources Office.
4. Treating sexual harassment matters **with seriousness and confidentiality** and sharing information regarding allegations, investigations, resolutions, etc., on a "need to know" basis.



5. Participating in and assuring the participation of all employees under his/her supervision (directly and indirectly) in all programs provided to educate employees relative to the prevention of sexual harassment.
6. Evaluating the work environment on a continuous basis through:
  - p Tours of the workplace with a view toward inspection for inappropriate calendars, graffiti, desk toys, etc, and
  - p Listening for inappropriate language, jokes, remarks, etc., in the everyday conversation of employees, and
  - p Discussing sexual harassment in regular management meetings, and immediately dealing with any problems encountered in the appropriate manner.
7. Assuring that each employee under his/her supervision, current **and new**:
  - p Is made aware of this policy and its contents as well as any forthcoming revisions, and
  - p Has an opportunity to ask questions regarding the policy, and
  - p Is informed that he/she must abide by the terms of the policy as a condition of employment, and
  - p Is informed of the consequences of violation of this policy.
8. Providing for formal review of this policy with **all** employees on an annual basis and providing a report of this review to the appointing authority. The report should include the date of the review and the names of the employees participating.

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9. Assuring that this policy remains posted on a bulletin board accessible to all workers **in each work site.**
10. Monitoring the effectiveness of the policy instructions and making recommendations for change to the Appointing Authority through the

deputy/assistant commissioner, Deputy Undersecretary or other Executive Level Administrator.

11. Maintaining appropriate records in a confidential manner to the extent provided by the law.
12. Participating in any investigation of a sexual harassment and/or retaliation allegation when requested and facilitating the participation of section employees when requested.

C. Managers/Supervisor Are Responsible For:

1. Personally complying with all aspects of this policy.
2. Reporting all allegations or discoveries of sexual harassment and/or retaliation to the section head, the appointing authority, the Human Resources Director, the Human Resources Assistant Director, or the Employee Relations Manager in the Human Resources Office.
3. Treating sexual harassment matters with seriousness and confidentiality and sharing information regarding allegations, investigations, resolutions, etc., on a "need to know" basis.
4. Compliance with this policy in any manner instructed by the section head (or supervisor).

D. Employees Are Responsible For:

1. Personally complying with all aspects of this policy.
2. Reporting any sexual harassment and/or retaliation which is occurring in any workplace of the Division in accordance with the procedure outlined above.

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3. Treating sexual harassment matters with seriousness and confidentiality and sharing information regarding allegations,

investigations, resolutions, etc., on a "need to know" basis.

4. Recognizing and exercising their right to raise the issue of sexual harassment and/or retaliation.
5. Documenting in writing incidents which are perceived to be offensive or harassing or retaliatory.
6. Directly and clearly informing anyone, employee, client, visitor, etc., when his/her behavior is offensive.

**E. The Human Resources Director Is Responsible For:**

1. Immediately apprising the appointing authority of the situation, upon becoming aware of an allegation of sexual harassment and/or retaliation.
2. At the direction of the appointing authority, investigating or assigning a staff member to investigate the matter thoroughly.
3. Reporting findings and recommendations to the appointing authority.
4. Treating sexual harassment matters with seriousness and confidentiality and sharing information regarding allegations, investigations, resolutions, etc., on a "need to know" basis.

**IX. EXCEPTIONS:**

There will be no exceptions to this policy.

**X. QUESTIONS:**

Questions regarding this policy should be directed to the Human Resources Director, Assistant Human Resources Director, or Employee Relations Manager of the Human Resources Office at 342-6060.

**XI. VIOLATION OF THIS POLICY:**

Employees found to have violated this policy will be subject to disciplinary action.

AG : cm